

1  
2  
3  
4 KELLY CARROLL, *et al.*,  
5 Plaintiffs,  
6 v.  
7 WELLS FARGO & COMPANY, *et al.*,  
8 Defendants.  
9

10 Case No. 15-cv-02321-EMC  
11

12  
13 **ORDER DENYING DEFENDANTS'**  
14 **MOTION FOR RELIEF FROM**  
15 **NONDISPOSITIVE PRETRIAL ORDER**  
16 **OF MAGISTRATE JUDGE, DATED**  
17 **DECEMBER 9, 2016**

18 Docket Nos. 153, 156  
19

20 Judge Westmore issued a discovery order on December 9, 2016, in which she held, *inter*  
21 *alia*, that Plaintiffs could take the deposition of Ms. Tolstedt. *See* Docket No. 148 (discovery  
22 order). Defendants have now filed a motion seeking relief from that order. Defendants' motion is  
23 hereby **DENIED**. *See* Civ. L.R. 73-2 (providing that, unless ordered by the district judge, no  
24 response to the motion "need be filed and no hearing will be held concerning the motion"; also  
providing that the district judge "may deny the motion by written order at any time").

25 Under Federal Rule of Civil Procedure 72(a), a district judge "must consider timely  
26 objections" to a magistrate judge's nondispositive order and "modify or set aside any part of the  
27 order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). "Clear error exists  
28 when the district court is 'left with the definite and firm conviction that a mistake has been  
committed.'" *Titus v. Humboldt Cnty. Fair Ass'n*, No. C 14-01043 SBA, 2015 U.S. Dist. LEXIS  
162517, at \*3 (N.D. Cal. Dec. 1, 2015).

29 In their motion, Defendants argue that Judge Westmore's order is contrary to law because  
30 it failed to apply the apex doctrine to Ms. Tolstedt on the ground that she is no longer employed  
31 by Wells Fargo. Defendants, however, have mischaracterized Judge Westmore's order. Judge  
32 Westmore did not hold that the apex doctrine is not applicable. In fact, she indicated that, under

1 the apex doctrine, there were grounds to depose Ms. Tolstedt because “Plaintiffs’ representation  
2 regarding [her] prior positions in the company indicates that she may possess unique, first-hand  
3 knowledge of the corporate culture that allegedly led to off-the-clock work.” Docket No. 148  
4 (Order at 4). That Judge Westmore subsequently added that she did “not find the apex doctrine  
5 *determinative . . .* because Ms. Tolstedt is no longer employed by Wells Fargo,” Docket No. 148  
6 (Order at 4) (emphasis added), is not the same thing as holding that the apex doctrine has no  
7 applicability.

8 Accordingly, the Court denies Defendants’ request for relief from Judge Westmore’s order  
9 permitting the deposition of Ms. Tolstedt. To the extent Plaintiffs have now argued (in a letter  
10 brief to the Court) that Defendants have failed to provide contact information for Ms. Tolstedt as  
11 well as other witnesses, *see* Docket No. 156 (letter), the Court rules as follows. As to Ms.  
12 Tolstedt, if she has authorized the attorney to accept service of the subpoena on her behalf, then  
13 there is no need for Plaintiffs to obtain (at this juncture) her personal contact information. But if  
14 the attorney is not authorized to accept service, then Defendants must provide the personal contact  
15 information for Ms. Tolstedt. As for the contact information of other witnesses, the Court orders  
16 the parties to meet and confer either in person or by telephone. If the parties are unable to reach  
17 agreement, then the discovery dispute(s) shall be taken to Judge Westmore consistent with the  
18 Court’s prior discovery referral.

19 This order disposes of Docket Nos. 153 and 156.

20  
21 **IT IS SO ORDERED.**

22  
23 Dated: January 3, 2017

24  
25   
EDWARD M. CHEN  
United States District Judge